

ORDINANCE NO. _____ 2005

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN INTERIM DEVELOPMENT ORDINANCE DEFERRING THE ACCEPTANCE OF DEVELOPMENT APPLICATIONS FOR THE REDEVELOPMENT AND CONVERSION OF MARINE FACILITIES INCLUDING COMMERCIAL MARINAS AND THE WORKING WATERFRONT UNTIL LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS ARE DRAFTED; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRANSMITTAL TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS (DCA); AND PROVIDING FOR EXPIRATION WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THE ORDINANCE OR WHEN THE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST.

WHEREAS, the Board of County Commissioners at their meeting of August 18, 2004, directed staff to have a public water access and marine facilities plan prepared for Monroe County; and

WHEREAS, the Board of County Commissioners discussed a policy of "No Net Loss" of working waterfront or public access to the waterfront ~~policy~~ at their December 16, 2004 meeting; and

WHEREAS, Monroe County is experiencing the loss of ~~and working waterfront and the~~ loss of public access to the water due to the redevelopment of marine facilities, including commercial marinas, and the working waterfront, including boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage, at an unprecedented rate; and

WHEREAS, the continued loss of working waterfront and public access in the County is and will be detrimental to the economic and social wellbeing and the health, safety, and welfare of the citizens of the County; and

WHEREAS, ~~there is a great concern that if nothing is done if~~ the Comprehensive Plan and land development regulations are not amended to control certain conversions and this redevelopments, future losses of ~~waterfront facilities~~ working waterfront and public access will negatively affect the economy and bring an end to critical marine services (e.g. boat yards), commercial marinas that are available to the public, and traditional trades associated with commercial fishing; and

WHEREAS, it is necessary to undertake a comprehensive and deliberate analysis of the economic, social, and quality of life implications of continued conversions and redevelopments and the impact of same on the public access and working waterfront; and

WHEREAS, preserving the status quo while undertaking said analysis will ensure that

the County's problems related to diminished public access and loss of working waterfront will not be exacerbated during the time it takes to prepare a well-reasoned and equitable planning and regulatory program; and

WHEREAS, preserving the status quo for a temporary period of time will prevent development that could be inconsistent with the Comprehensive Plan and/or with pending changes to the Comprehensive Plan or land development regulations; and

WHEREAS, a number of waterfront owners are exploring the possible change of use of their property to private residential uses and private exclusive use of dockage which will further decrease the public access and/or working waterfront; and

WHEREAS, Goal 212 of the 2010 Comprehensive Plan directs the County to prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County; and

WHEREAS, Goal 213 of the 2010 Comprehensive Plan directs the County to ensure adequate public access to the beach or shoreline; and

WHEREAS, Objective 502.1 of the 2010 Comprehensive Plan directs the County to promote the preservation and enhancement of the existing ports and port related activities; and

WHEREAS, the County ~~does not have an accurate~~ needs to update and augment its inventory of public access points, pertinent-waterfront facility locations and specific waterfront uses in order to have and a thorough and accurate understanding of the socio-economic data on existing waterfront marine facilities; and

WHEREAS, the acceptance or processing of development applications during the term of this ordinance would result in confusion for property owners, inefficiencies in governmental services, and potentially redundant review processes and may unreasonably affect the expectations of property owners; and

WHEREAS, the approval of development applications for conversions and redevelopment, as described herein, will result in the continued and irreversible loss of public access and working waterfront; and

WHEREAS, the exemption of certain uses and development activities, as provided herein, advances the intent of this Ordinance and will not diminish public access or further the loss of working waterfront; and

WHEREAS, the County recognizes the need to develop comprehensive plan and land development regulations and programs to preserve marine facilities including commercial

marinas that offer public access and provide for working waterfront ~~that offer public access~~; and

WHEREAS, the Board of County Commissioners at their meeting of January 19, 2005, voted to contract with the South Florida Regional Planning Council to prepare the public water access and marine facilities plan and implementation measures including Comprehensive Plan and Land Development Regulations; and

WHEREAS, the County has committed necessary staff and resources to the development of these policies and regulations; and

WHEREAS, this interim Ordinance and the planned amendments to the Plan and land development regulations are necessary to protect the health, safety, and general welfare and to advance the policies set forth in the Comprehensive Plan; and

WHEREAS, the utilization of the moratorium device as a temporary measure to facilitate government decision making, study and adoption of comprehensive plan and land development regulations is a legitimate governmental tool to facilitate logical and considered growth and as a means of avoiding inefficient and ill-conceived development; and

WHEREAS, the County finds that it is necessary to enact an Interim Development Ordinance deferring the acceptance of development applications that seek development approval for the redevelopment of waterfront properties; and

WHEREAS, the County finds that a 365-day deferment of development applications and approvals as provided herein is reasonable and is the minimum necessary to protect the health, safety, and general welfare of the citizens of the County and to implement the Comprehensive Plan; and

WHEREAS, the temporary deferral of development applications and approvals, as provided herein, are not intended nor shall it be construed to inhibit the existing lawful use of properties in accordance with the Comprehensive Plan and land development regulations; and

WHEREAS, Chapter 125, F.S. authorizes the Board of County Commissioners to adopt ordinances to provide standards protecting against imminent and immediate threat to the health, safety and welfare of the citizens of Monroe County; and

WHEREAS, this Interim Development Ordinance constitutes a valid exercise of the County's police power and is otherwise consistent with Section 163.316, *et seq.*, F.S., which, *inter alia*, encourages the use of innovative land development regulations including provisions like moratoria to implement the adopted comprehensive plan; and

WHEREAS, the Board of County Commissioners at a regular meeting on January 19,

2005, directed staff to prepare an ordinance deferring acceptance of applications for redevelopment of marine facilities including commercial marinas and the working waterfront (boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage) that would diminish public access or result in the loss of working front, while staff prepares amendments to the 2010 Comprehensive Plan and Land Development Regulations; and

WHEREAS, following direction of the Board of County Commissioners, the Growth Management staff immediately undertook the development of this Interim Development Ordinance and preparation of a contract for the development of a public water access and marine facilities plan and implementation measures including Comprehensive Plan and Land Development Regulations; and

WHEREAS, the Planning Commission has reviewed the draft Interim Development Ordinance and considered ~~recommended~~ approval to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners has reviewed and considered the draft Interim Development Ordinance recommended by the ~~Planning Commission~~ and Planning staff; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. The purpose and intent of this Interim Development Ordinance is to implement the Board of County Commissioners' directive of January 19, 2005, to prepare an interim development ordinance to prevent further redevelopment and conversion of marine facilities including commercial marinas and the working waterfront, that result in the loss of working waterfront and diminish public access and in order to implement a policy of "No-Net-Loss" of working waterfront and public access to marine facilities while legislation is being prepared.

Section 2. Except as provided for in Section 5 of this ordinance, Redevelopment and conversion of existing uses and structures, as used in this ordinance, includes the following:

- Any change of use from a water dependent use to a water enhanced or a non-water dependent use of a commercial marina.
- Any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership.
- Any modification, improvements or expansions of existing marine facilities, ~~resulting in the loss of public access from both land and water to the waterfront and water body.~~
- Any change of use of the working waterfront to a commercial marina or a non-water dependent use.

Section 3. The following definitions apply in this ordinance:

- Existing uses and structures means those uses and structures in existence prior to and including February 28, 2005.
- Commercial marina means a facility with three or more slips for the mooring, berthing, storing or securing of watercraft and may include accessory retail and service uses, but not including docks accessory to land based dwelling units or individual berths under private ownership.
- Marine facility means commercial marinas, the working waterfront, and any other public access point including boat ramps that provide public access to the navigable waters of the state.
- Public access means the ability of members of the public to physically reach, enter, or use a water-body by either land or water.
- Working waterfront means a parcel or parcels of real property that provide access for water dependent boatyards, wet and dry storage, fish houses (fish landings, processing and packaging) and commercial fishing vessel dockage; it does not mean commercial marinas for the dockage of pleasure craft.
- Water dependent use means a use or portions of a use that can only be carried out on, in or adjacent to water areas because the use requires access to the water body.
- Water enhanced use means a use that is not a water dependent use but benefits economically or aesthetically by its location on the waterfront; examples include restaurants, hotels and residential uses.

Section 4. During the time this ordinance is in effect as specified herein, there shall be a moratorium upon the issuance of building permits, acceptance of development applications or issuance of development orders and development permits within unincorporated Monroe County concerning the redevelopment or conversion of existing uses and structures related to marine facilities, including commercial marinas and the working waterfront, that result in diminished public access or loss of working waterfront, except as provided herein.

Section 5. Exempt from this ordinance is are the following:

- Development under an approved Conditional Use Permit, general maintenance, repair and/or safety improvements; and,
- Any modification, improvements, or expansion to existing marine facility that does not diminish public access and does not result in the loss of working waterfront.

Section 6. Pursuant to its lawful authority and the pending legislation doctrine as set forth in Smith v. City of Clearwater, 383 So.2d 681 (Fla. 2d DCA, 1980) the Board of County Commissioners hereby establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until the expiration of this legislation within one year of its effective date or whenever the plan and land development regulations

become effective, whichever comes first.

Section 7: Until expiration of this Interim Development Ordinance no application for a building permit or development approval for any development or redevelopment, that meets the criteria for review identified in Section 2 hereof, shall be granted pursuant to an application or request with a submittal date of March 1, 2005, or later.

Section 8: Any application for a building permit or development approval with a submittal date of February 28, 2005, or earlier shall be exempt from this Interim Development Ordinance.

Section 9: As of the effective date of this Ordinance no application for a building permit or development approval, meeting the criteria for review identified in Section 2 hereof, shall be accepted or processed by the Growth Management Division, except applications exempt hereunder and development awarded a vested rights determination pursuant to Section 11 hereof.

Section 10: This Ordinance shall not be construed to prohibit the application for or issuance of a building permit or development approval for any development or redevelopment that does not meet the criteria for review identified in Section 2 hereof, or that does not result in diminished public access or the loss of working waterfront, that is allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

Section 11: Any property owner adversely affected by the provisions of this Interim Development Ordinance may seek a determination that the owner's proposed development or redevelopment is vested against the provisions of this Interim Development Ordinance, by filing with the Director of Growth Management, together with an administrative fee in the amount of \$400, a vested rights application setting forth facts establishing the applicant met, prior to the date that this Ordinance is adopted by the Board of Monroe County Commissioners, the vested rights standards set forth in Section 9.5-181, Monroe County code. Such application must be filed no later than sixty (60) days after the effective date of this ordinance.

Section 12: The County Administrator is directed to have the Growth Management Division begin immediately preparing the draft text amendments and other supporting studies in cooperation with the Planning Commission in order to address the issue of redevelopment and conversion of marine facilities that result in diminished public access or the loss of working waterfront.

Section 13. If any section, subsection, sentence, clause, item, charge or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 14. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 15. The ordinance is hereby transmitted to the Florida Department of Community Affairs pursuant to Chapter 380, Florida Statutes and the DCA is requested to review and approve it by Immediate Final Order in accordance with F.S.120.569(2)(n), in recognition of the public importance of retaining the working waterfront, marine facilities, and public access to the waterfront, and to prevent the threat of further loss thereof as "an immediate danger to the public health, safety, or welfare".

Section 16. This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving ordinance pursuant to Florida Statutes, Chapter 380.

Section 17. This ordinance shall stand repealed as of 11:59 p.m. on the 365th day after the effective date of the Ordinance, unless repealed sooner by the Board of County Commissioners or upon the adoption of amendments to the comprehensive plan and land development regulations addressing public access and marine facilities.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the ____ day of _____, 2005.

Mayor Dixie Spehar _____
Mayor Pro Tem Charles "Sonny" McCoy _____
Commissioner Murray Nelson _____
Commissioner George Neugent _____
Commissioner David Rice _____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY _____

Mayor Dixie Spehar

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

Deputy Clerk

